IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019 / 29TH BHADRA, 1941

WP(C).No.10727 OF 2019(M)

PETITIONERS:

1 ST.MARY'S ORTHODOX SYRIAN CHURCH
(PIRAVAM VALIYA PALLI),
PIRAVOM PIN 686 664, REPRESENTED BY ITS VICAR,
FR. SKARIAH VATTAKATTIL

2 SRI. K.P.JOHN,
AGED 62 YEARS
S/O PAILY, KADALIKATTIL, MOOLAKUNNEL, PIRAVOM
VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT
686 664. KERALA STATE.

3 FR. SKARIA VATTAKATTIL,
AGED 82 YEARS
S/O LATE MATHEW, VICAR, ST. MARYS ORTHODOX
SYRIAN CHURCH, PIRAVOM, (PIRAVOM VALIYA
PALLI)ERNAKULAM DISTRICT, PIN 686 664, KERALA
STATE.

4 FR. MATHEW VATHAKATTIL,
AGED 63 YEARS
S/O V.M. ABRAHAM, PIRAVOM P.O.PAZHOOR-686 664.

5 FR. MATHEWS KANJIRAMPARA,
AGED 55 YEARS
S/O YOHANNAN, PERUMPILLY P.O.
MULANTHURUTHY- 682 314

6 FR. ELIAS CHERUKATTU,
AGED 50 YEARS
S/O C.V JACOB, EZHAKARANAD P.O. MANEED VILLAGE,
PUTHENCRUZ- 682 308

7 U.P. JOHN,
AGED 74 YEARS
S/O PAILY, URAKKATIL PAZHOOR, PIRAVOM
P.O.TRUSTEE. ST. MARY'S ORTHODOX SYRIAN CHURCH
(PIRAVOM VALIYA PALLI), PIRAVOM.

8 M.P. BABU,
AGED 58 YEARS
S/O PAULOSE, MANKIDIYIL HOUSE, PIRAVOM TRUSTEE.
ST. MARY'S ORTHODOX SYRIAN CHURCH (PIRAVOM
VALIYA PALLI), PIRAVOM.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.V.B.UNNIRAJ
SMT.P.ANITHA

RESPONDENTS:

1 THE STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 THE DISTRICT COLLECTOR,
ERNAKULAM, CIVIL STATION, KAKKANAD-682 030

3 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695 001.

4 THE INSPECTOR GENERAL OF POLICE,
CENTRAL ZONE, KOCHI 682 011

5 THE DISTRICT POLICE CHIEF,
ERNAKULAM RURAL, ALUVA-683 101

6 THE DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA-686 661.

7 THE STATION HOUSE OFFICER,
PIRAVOM POLICE STATION, PIRAVOM-686 664

8 FR. SIMON CHELLIKKATTIL,
COR EPISCOPA, CHELLIKKATTIL HOUSE, KALAMBOOR
P.O.PIRAVOM- 686 664.

9 FR. MATHEWS,
S/O CHERIANKUNJU, MANAPATTU HOUSE, MAMMALASSERY
P.O.RAMAMANGALAM-686 663.

10 FR. ROY MATHEW,
S/O MATHEW, MEPPADATHU HOUSE, PIRAMADOM NORTH
P.O. PAMPAKUDA VIA, PIN 686 667

11 FR. VARGHESE,
S/O FR. THOMAS, PANICHIYIL HOUSE, THIRUVANIYOOR
P.O.PUTHENCRUZ- 682 308

12 FR. SHIBIN PAUL,
S/O T.S PAILY, PERUMBATHU (THEKEKUDIYIL) HOUSE,
MATTAKUZHY P.O.VARIKOLI-682 308

13 MR. V.V.JOHN,
S/O VARKEY, VELLOOKATTIL HOUSE, PIRAVOM
P.O.PIRAVOM-686 664.

14 MR. BIJU VARGHESE,
S/O VARGHESE, KADALIKATTIL HOUSE, MULAKULAM
NORTH P.O.PIRAVOM-686 664

15 MR. JOHN K.A,
S/O ABRAHAM, KUMBALASSERIL HOUSE, PAZHOOR,
PIRAVOM-686 664

16 DR. THOMAS MAR ATHANASIUS,
METROPOLITAN , DIOCESE OF KANDANAD EAST,
BISHOP'S HOUSE, MUVATTUPUZHA, PIN 686 661.

17 T.T.JOY,
S/O THOMAS, THEKKUMMOOTTIL HOUSE, KAKKAD
P.O.PIRAVOM- 686 664

18 **JOY VARGHESE,**
S/O VARKEY, THENNASSERIL, MULAKKULAM SOUTH,
PERUVA, PIN 686 610.

R1-7 BY SRI.K.V.SOHAN, STATE ATTORNEY
R8, R13 BY ADV. SRI.K.J.KURIACHAN
R8, R13 BY ADV. SRI.SUNIL JACOB
R10 BY ADV. SRI.K.RAMAKUMAR (SR.)
R10 BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL
R14 BY ADV. SRI.GEORGE MATHEW
R15 BY ADV. JOHN.K.A(PARTY-IN-PERSON)
R16 BY ADV. SRI.K.PAUL KURIAKOSE
R16 BY ADV. SRI.T.A.RAFEEK (CHERTHALA)
R18 BY ADV. SRI.M.T.SURESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 3.09.2019, THE COURT ON 20.09.2019 DELIVERED THE FOLLOWING:

J U D G M E N T

Shaffique, J.

The writ petition is filed by the St.Mary's Orthodox Syrian Church, Piravom represented by its Vicar, the 3rd respondent, a few trustees of the Church, a parishioner and petitioners 4 to 6 being Assistants to the Vicar, *inter alia* seeking the following reliefs:-

> *"(i) To call for the records and proceedings of the respondents 1 to 6 relating to Exhibits P1 to P16 and after scrutiny thereof, to direct respondents 1 to 7 to afford adequate and effective police protection to the petitioners 4 to 7 to conduct religious services in 1st petitioner church and 2nd petitioner and other parishioners of the 1st petitioner Church in participating such religious services without any let, hindrance or obstruction from respondents 8 to 15, their men, agents or followers and anybody claiming under them by the issue of a writ of mandamus or any other appropriate writ, order or direction, in the interests of justice.*
>
> *(ii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1 to 7 to act strictly adhering to the decision of the Hon'ble Supreme Court reported in 2017 (3) KLT 261 (SC)= 2017 (15) SCC 333 and Exhibit P8, ensuring that no priest or prelate appointed and entitled to hold office, otherwise than in accordance with Malankara Church Constitution of 1934 conduct any sacraments including Holy Mass in the 1st petitioner-church, its chapels, cemetery or the appurtenant*

buildings thereto".

2. Learned Senior Counsel Sri.S.Sreekumar appeared on behalf of the petitioners. The complaint of the petitioners is that despite the judgment of the Apex Court in ***Moran Mar Basselios Catholicos v. Thukalan Paulo Avira*** (1958 KLT 721), ***Most.Rev.P.M.A. Metropolitan v. Moran Mar Marthoma*** (AIR 1995 SC 2001) and ***K.S.Varghese v. St. Peter's and St.Paul's Syrian Orthodox Church*** (2017 (3) KLT 261 (SC); 2017(15) SCC 333) upholding and reiterating that the Malankara Church is episcopal in character and the 1934 Constitution fully governs the affairs of parish churches and there should not be any attempt to create parallel system of administration of the same churches leading to law and order problem, respondents 8 to 15, their men and followers are not permitting the Vicar and the Priests appointed by the Malankara Metropolitan to conduct religious services and prayer in the first petitioner Church.

3. It is contended that Managing Committee of the Malankara Association was elected on 20/3/2002, pursuant to which, the Managing Committee in its meeting held on 9th and 10th of August, 2002 requested the Malankara Metropolitan and Catholicos to issue Kalpanas with reference to the decisions taken

by them. By Ext.P2 Kalpana No.134 of 2002 dated 12/8/2002, the Catholicos and Malankara Metropolitan of Malankara Orthodox Syrian Church appointed the 16th respondent as the Diocesan Metropolitan of the Diocese of Kandanad East with the list of churches and the 1st petitioner church is one among it.

4. The 1st petitioner church filed OS No. 6/1985 as a representative suit under O.1 Rule 8 C.P.C., *inter alia* seeking for a declaration that St.Mary's Orthodox Syrian Church, Piravom has to be administered under 1934 Constitution of Malankara Church, as amended and a declaratory decree was passed on 25/1/2013 as per Ext.P3 judgment. In the said suit, 3rd petitioner was the 53rd defendant and the 8th respondent was the 16th defendant.

5. 3rd petitioner was appointed as the priest of the said Parish Church on 15/2/1988. He was made the Vicar of the Church by the Diocesan Metropolitan as per Kalpana No.71 of 1992 dated 25/12/1992. After Ext.P2, the Diocesan Metropolitan appointed the 3rd petitioner as Vicar of the first petitioner church as per Kalpana No.46 of 2002 dated 17/8/2002 produced as Ext.P4, and he continued to be the Vicar appointed under the 1934 Constitution. Later, petitioners 4 to 6 were appointed as Assistants to the Vicar/Priests in the first petitioner church by the

Diocesan Metropolitan as per Ext.P5 dated 23/4/2018 (Kalpana No.16/2018). The 8th respondent who continued as a Priest of the Patriarch faction was removed as per Kalpana No.39/2004 dated 2/8/2004 as he attained the age of superannuation as evident from Ext.P6. The 10th respondent was also removed from the post of Priest as per Ext.P7 Kalpana No.15/2009 and in turn Father Simon Varghese was appointed in his place. Father Simon Varghese was finally transferred from the 1st petitioner church. Despite the same, respondents 8 and 10 claimed and continued as the Priests of Patriarch Faction which according to the petitioners was in violation of the judgment of the Apex Court. It is submitted that during the pendency of the suit, by interim arrangement, both the factions were conducting religious practices on alternate days.

6. Challenging the judgment in OS No.6/1985, appeals came to be filed before the High Court. The same was disposed of by a common judgment dated 3/8/2014 setting aside the decree of the trial Court and dismissing the suit for want of plea under Section 92 of CPC.

7. The 2nd petitioner and certain others filed Special Leave Petitions before the Apex Court. Apex Court by judgment

dated 19/4/2018 (Ext.P9) disposed of the Civil Appeals in the following manner:-

> *"Leave granted.*
>
> *As the controversy in question has been finally decided in the case of K.S. Verghese vs. St. Peter's & Paul's Syrian Orth. & Ors. in C.A. No.3674 of 2015 etc. decided on 3rd July, 2017 [2017 (15) SCC 333], in which it has been laid down that 1934 Constitution holds the field, nothing further survives in the matters for adjudication. Consequently, the appeals stand disposed of in terms of the above judgment.*
>
> *Let all the concerned courts and authorities act in terms of the judgment. Let there be no multiplicity of the litigation on this aspect any more in the various courts. The decision rendered in representative suit is binding on all."*

8. The submission of the petitioners is that even after the judgment in ***K.S.Varghese*** (supra) respondents 8 to 15 and others are squatting inside the 1st petitioner church throughout day and night to prevent entry of petitioners 3 to 6 and other parishioners into the Church. Hundreds of persons under the leadership of respondents 8 to 15 were sitting inside the church by locking the gate and physically prevented the members of the Orthodox faction from enjoying the benefits of Ext.P9 judgment. A representation was therefore submitted by the petitioners to respondents 2, 4 to 7 on 30/4/2018 requesting them to render

adequate and sufficient police protection. Petitioners 3 to 6 also submitted a representation expressing their intention to enter into the 1st petitioner Church on 8/5/2018 to conduct religious services and sought for police protection. It is submitted that though objections were raised in other churches like St.Peter's and St.Paul's Orthodox Syrian Church, Kolencherry and St.Thomas Church, Nechoor, police protection has been issued by this Court by separate judgments. In so far as the police did not take any action in the matter, a further representation was submitted on 23/5/2018. According to the petitioners, respondents 8 to 15 and their followers who claimed to be the Jacobite faction openly declared that they will obstruct any service being conducted by the Vicar and the Priests appointed by the Orthodox faction. Petitioners filed WP(C) No.17998/2018 seeking police protection to conduct religious services in the first petitioner church in which, the 5th respondent, who is the District Police Chief, Ernakulam Rural, Aluva filed an affidavit stating that about 200 parishioners belonging to the Jacobite faction including women and children are assembling in the church regularly on all days and youngsters are assembling on all nights in the church to prevent the petitioners or members of Orthodox faction from

entering into the church. It is also stated that the Jacobite faction has treated the issue relating to Piravom church as a prestige issue and if they lose control and administration of the Piravom church, they may lose control over 1200 other churches. Therefore, according to the police, there is every chance for the Jacobite faction to indulge in any activity to prevent the members of Orthodox faction from entering into the church. In the affidavit it is further stated that as per the intimation received from local police, there has been threats that suicide attempts may be made by members of Jacobite faction and they may try to attempt self immolation, to jump from the watch tower in the church compound or jump into the Piravom river. There had been attempts to block the road to church by positioning heavy vehicles and they may again block the road in such a fashion and may set fire to the vehicles in the road for obstructing police and members of the Orthodox faction from entering the church compound. Perusal of the affidavit would indicate that the police expects a law and order situation in the event the Orthodox faction takes control over the church.

9. However, according to the petitioners, they had to withdraw the said writ petition with liberty to file a fresh writ

petition which was permitted by this Court as per judgment dated 21/2/2019 (Ext.P16).

10. The allegation is that the situation still continues and respondents 8 to 15 and their supporters would do anything to prevent implementation of the judgment of the Apex Court. In so far as respondents 1 to 7 have a duty to implement the directions in the judgment and to avoid law and order situation, necessary police protection has to be granted in the matter.

11. Learned senior counsel Sri.P.Ravindran appeared on behalf of the 14th respondent. In their counter affidavit, it is contended that after withdrawal of WP(C) No. 17998/2018, no fresh cause of action had arisen to invoke the jurisdiction of this Court by seeking a direction for police protection. Further, the name of the Church is St.Mary's Jacobite Syrian Church and there is no church by name St.Mary's Orthodox Syrian Church at Piravom. They deny that petitioners 4 to 6 are Assistants to the Vicar of the Church. The right of the 3rd petitioner to represent the church is also disputed. According to the 14th respondent, petitioners 7 and 8 are not trustees of the Piravom Valiya Palli elected as per parish assembly held on 28/1/2018. No such meeting was held at all. According to the said respondent, in so

far as the parishioners of Piravom Valiya Pally are not against the 1934 Constitution, their only contention is that the religious dignitaries who are appointed under the 1934 Constitution should recognize the Patriarch of Antioch.

12. The 10th respondent has filed a counter affidavit. He contended that he was appointed to render religious services in the church as per order dated 22/12/1988 in IA No.945/1988 in OS No. 2/1985 and he had been conducting religious services in the church till 22/12/1988. According to him, Piravom Valiya Pally had not adopted the 2002 Constitution. That apart, petitioners are not accepting the 1934 Constitution in its letter and spirit. According to him, Malankara Church is a division of Universal Syrian Orthodox Church as stated in the first clause of the 1934 Constitution and Patriarch of Antioch is the supreme head of the Syrian Orthodox Church. Though the petitioners are ready and willing to accept Clause 1 of 1934 Constitution, they are not ready to obey the 1934 Constitution in the strict sense. Still further, it is contended that petitioners have an alternate remedy to enforce the order of the Apex Court and therefore there is no necessity to seek police protection.

13. Counter affidavit was filed by respondents 8 and 13.

According to the 8th respondent, he is the Parish Priest and Vicar of the Church appointed as per Kalpana No.284/1974 dated 22/12/1974 [Ext.R8(a)]. He denies the fact that the 3rd petitioner is the Vicar of the 1st petitioner church. According to him, Ext.P6 has been issued by the 16th respondent in violation of order dated 12/4/2002 passed by the 1st Additional District Court, Ernakulam in IA No.1326/2002 in OS No.6/1985 [Ext.R8(c)]. 8th respondent further states that he was again appointed as Vicar replacing the 1st petitioner as per Kalpana No.101/95 dated 24/11/1995 [Ext.R8(d)]. That apart, by another Kalpana No.3/98 dated 7/1/1998 [Ext.R8(e)], he was permitted to continue as Vicar until further Kalpana is issued. According to respondents, 16th respondent has created records appointing several priests in the first petitioner church during pendency of OS No. 6/1985 which is not binding upon them. However it is stated that after the judgment of the Apex Court, the deponent as well as his Assistant Priest has accepted the 1934 Constitution but they further accept that Patriarch of Antioch is the supreme head of Syrian Orthodox Church of which Malankara church is a part/division. They also uphold the faith that Patriarch is spiritually superior as per the 1934 Constitution. According to them, the status of Patriarch and

the spiritual powers of Patriarch over the Malankara church was upheld by the Apex Court in the 1958, 1995 and 2017 judgments. Therefore, according to them, 16th respondent cannot exercise any spiritual, episcopal and temporal authority as a Diocesan Metropolitan of the 1st petitioner Church without accepting the spiritual supremacy of the Patriarch over the Malankara Church and without accepting the fact that Malankara Church is a division of Syrian Orthodox Church headed by the Patriarch of Antioch. Therefore, petitioners 3 to 6 cannot officiate services in the Church unless they accept and approve the spiritual supremacy of the Patriarch over Malankara Church and the declaration of law made by the Apex Court that Malankara Church is a part/division of Syrian Orthodox Church headed by the Patriarch.

14. The 15th respondent appeared as party-in-person. After referring to the judgments, his contention is that when all the parishioners accept the 1934 Constitution, the Orthodox faction has to accept the 1934 Constitution in its letter and spirit. They cannot ignore that Patriarch of Antioch is the supreme spiritual leader of the Church. The Apex Court had also accepted the fact that the Patriarch of Antioch is the supreme head of

Malankara Church. But, the Orthodox faction is not willing to accept the same. If they are willing to accept that Patriarch of Antioch is the spiritual head, there is no other issue between the rival factions. An additional counter affidavit has been filed by the 15th respondent reiterating the arguments raised by him.

15. The learned State Attorney based on the statement filed by the 7th respondent stated that the majority of the parishioners are followers of the erstwhile Jacobite faction and it is understood that there would be stiff resistance from the majority believers against the Orthodox faction taking forceful control over Piravom Valiya Pally. Reference is made to the incidents on 8/5/2018 and 10/12/2018 when attempts were made by the Priests of Orthodox faction to have control over the Church. It is stated that on both the occasions, large number of members of the Jacobite faction prevented the Orthodox faction from entering the Church. Therefore, according to the police, the directions in the judgment of the Apex Court could be done in a phased manner and that too on complying with the stipulations and directions issued by the police in that regard including providing identity cards to those members who are entitled to participate in the religious services being conducted in the

Church.

16. In fact, the controversy among the rival factions stands fully decided by the Apex Court in ***K.S.Varghese*** (supra) and the conclusions were succinctly stated at paragraph 184 (KLT), as under:-

> *"**184**. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :*
>
> *(i) Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the Parish Churches and shall prevail.*
>
> *(ii) The decree in the 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.*
>
> *(iii) The 1995 judgment arising out of the representative suit is binding and operates as res judicata with respect to the matters it has decided, in the wake of provisions of Order I Rule 8 and Explanation 6 to S.11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit, i.e., Samudayam suit are also binding on Parish Churches/Parishioners to the extent issues have been decided.*
>
> *(iv) As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of*

the Patriarch.

(v) The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

(vi) Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of Parish Churches by appointing Vicar, Priests, Deacons, Prelates (High Priests) etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the concerned Diocese, Metropolitan etc.

(vii) Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any Association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust, is always a trust.

(viii) When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval ofthe Church hierarchy.

(ix) The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.

(x) As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

(xi) This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

(xii) It is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc., in contravention of the 1934 Constitution.

(xiii) Malankara Church is Episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

(xiv) Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, Priests, Deacons, Prelates (High Priests) etc., is made as per the 1934 Constitution. The

Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

(xv) Udampadis do not provide for appointment of Vicar, Priests, Deacons, Prelates etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, Priests, Deacons, Prelates (high priests) etc., is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, Priests etc. The spiritual power also vests in the other functionaries of Malankara Church.

(xvi) The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the church being Episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the Parishioners who believe in the spiritual supremacy of the Patriarch.

(xvii) The Church and the Cemetry cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish

Churches, would remain in trust as it has for the time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

(xviii) The faith of Church is unnecessarily sought to be divided vis-a-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

(xix) The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating the spiritualsupremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995 has not been respected by the Patriarch faction which was binding on all concerned. Filing of Writ Petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar etc., in violation of the 1995 judgment of this Court.

(xx) The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group

or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the Parish Churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.

(xxi) The Udampadies of 1890 and 1913 are with respect to administration of Churches and are not documents of the creation of the Trust and are not of utility at present and even otherwise cannot hold thefield containing provisions inconsistent with the 1934 Constitution, as per S.132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

(xxii) The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadis for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

(xxiii) In otherwise Episcopal church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in S.22 etc.

(xxiv) The formation of 2002 Constitution is the result of illegal and void exercise. It cannot be recognized and the parallel system created thereunder for administration of Parish Churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

(xxv) It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Order I Rule 8 C.P.C. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

(xxvi) The 1934 Constitution is appropriate and adequate for management of the Parish Churches, as such there is no necessity of framing a scheme under S.92 of the C.P.C.

(xxvii) The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration.

(xxviii) Both the factions, for the sake of the sacred religion they profess and to preempt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted".

17. In yet another order in ***St.Mary's Orthodox Church***

v. The State Police Chief [2019 (3) KLT 419 (SC)], the Apex Court after referring to the judgment in ***K.S.Varghese*** (supra) held as under:-

> *"There cannot be any violation of the order by any one concerned. Even the State Government cannot act contrary to the judgment and the observations made by this Court and has the duty to ensure that the judgment of the court is implemented forthwith.*
>
> *Any observation made by the High Court contrary to the judgment passed by this Court stands diluted.*
>
> *The State and all parties shall abide by the judgment passed by this Court in totality and cannot solve the matter in any manner different than the judgment passed by this court. No parallel system can be created.*

18. In fact, the entire issue raised between two rival factions of the Malankara Church had been decided by the Apex Court in its judgment in ***Most. Rev. P.M.A. Metropolitan*** (supra). But, still various other issues had been raised which reached the Apex Court and it resulted in judgment in ***K.S.Varghese*** (supra). While delivering the judgment, at Clause (iv) of paragraph 184, it is stated that the 1934 Constitution is valid and binding upon the Parish Churches and it is not open to any individual Church to decide to have their own Constitution. It is further held that it is not permissible to create a parallel

system of management in the Churches under the guise of spiritual supremacy of the Patriarch. Further, at Clause (v), it has been held that the Primate of Orthodox Syrian Church of the East is Catholicos who enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution. Clause (x) clearly indicates that the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy and the Patriarch cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches. Clause (xii) further indicates that it is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc., in contravention of the 1934 Constitution. In the light of the judgment in ***K.S.Varghese*** (supra), we do not think that any contentions are available to the the contesting respondents.

19. The difference in the nomenclature of the Church will

not render any assistance to the contesting respondents. The suit OS No. 6/1985 has been filed for a declaration that Piravom St.Mary's Orthodox Syrian Church and its assets described in the Schedule are to be administered under the Constitution of Malankara Orthodox Syrian church passed on 26/12/1934 and the church was also known as Piravom Valiya Pally. The suit has been decreed declaring that St.Mary's Orthodox Syrian Church has to be administered under the 1934 Constitution. The said judgment has become final as evident from order in Civil Appeal Nos.33156 to 33159/2014 wherein the Apex Court had in clear terms indicated that the controversy has been finally decided in ***K.S.Varghese*** (supra) and therefore the suit was decided in the light of the said judgment. A specific direction has also been issued that all concerned courts and authorities should act in terms of the judgment and there shall be no multiplicity of the litigation on the said aspect any more in various courts in so far as the decision rendered in a representative suit is binding on all. When the judgment in ***K.S.Varghese*** (supra) holds the field and which has been made clear by the Apex Court in ***St.Mary's Orthodox Church*** (supra), none can obstruct the right of the Orthodox faction to manage the Church. A reference to the

judgment in ***K.S.Varghese*** (supra) clarifies each and every issue and there is no two way of looking at it. The Vicars or the Priests to conduct religious service and other functions, both spiritual and administrative, are to be appointed by the Malankara Metropolitan and in terms with the 1934 Constitution. When any such Vicar or Priest has been appointed in terms with the procedure prescribed under the 1934 Constitution, respondents 8 to 15 or any other person, as the case may be, have no right to obstruct the same. If there is any such obstruction, which involves law and order problem, it is for the police to ensure maintenance of law and order. That there is a stiff opposition from the members of Jacobite faction is not in dispute. Presently their only claim is that the Orthodox faction should accept the spiritual supremacy of the Patriarch of Antioch and in that event, the entire dispute will be over.

20. But it is relevant to note that in ***K.S.Varghese*** (supra), the Apex Court had considered all these issues. One of the questions formulated was “repudiation of spiritual authority/supremacy of Patriarch by the Catholicos”. Though arguments were made placing reliance on clause 101 of the 1934 Constitution, the Apex Court held at paragraph 140 as under:-

"140. The principle enunciated by this Court in respect of Knanaya Church is not at all applicable with respect to Parish Churches where the finding of this Court is otherwise to the effect that they are bound by the 1934 Constitution. The spiritual supremacy of the Patriarch has not been put into question by the Catholicos faction it was not pleaded that his appointment is not recognized by the Catholicos faction. The Universal Synod in accordance with the applicable Canon appoints the Patriarch. We are of the opinion that in the absence of any dispute as to the identity who is the Patriarch, there is no question of not recognizing Patriarch by the Malankara Church hence. Rightly it has not been pleaded, but that does not help the appellants with respect to appointment of Vicar and Priests etc. However, what is the extent of authority of the Patriarch has to be seen and gazed in the light of historical background - Kalpanas - and what has been held in various representative suits from time to time which are binding to the extent the issues decided. We are of the considered opinion that once office of the Catholicos has been re-established, Patriarch could not exercise the powers which have been dealt with in the 1934 Constitution, and conferred on various authorities in hierarchy of church, that too unilaterally to create another centre of power and thereby the Patriarch cannot be permitted to create parallel system of administration by appointing Vicars,Priests and Deacon or another authority of Church. He is bound to act within the four corners of the1934 constitution for the sake of peace in the church. In the temporal matters, Patriarch has no power and the spiritual power had also come to the

> *vanishing point by his own acts as noticed by this Court in the 1995 and other judgments. Submission to the contrary on behalf of the appellants that he can exercise the powers after informing the Catholicos, cannot be accepted. The Malankara Metropolitan has to be of local area. Logically also for proper management of the affairs of Churches power cannot be exercised from abroad. Such a scenario is neither conceived nor feasible or permissible. The spiritual supremacy of one holy authority over the other, also cannot per se mean exclusion and subordination of the other religious authority. When there is delegation and delimitation of the territorial and other powers, concerned authorities however high they may be, spiritually or otherwise, have to follow the discipline and strictly act as per delimitation of zones and powers. It is absolutely necessary for survival of the Church and for proper administration".*

21. Once it has been held by the Apex Court that Patriarch has no power in the temporal matters and the spiritual power has also come to a vanishing point by his own acts as taken note of in the 1995 and other judgments, we are of the view that the respondents cannot take such a contention at this point of time especially in a case where police protection is sought to enforce the judgment of the Apex Court.

22. Further, in Civil Appeal Nos.7115-7116 of 2019 (***Fr.Issac Mattammel Cor-Episcopa v. St.Mary's Orthodox Syrian Church and Others***), in an identical matter, the Apex

court had reiterated the judgment in ***K.S.Varghese*** (supra) and held at paragraphs 6, 7 and 8 as under:-

> *"6. It is made clear to all concerned more so, to the Courts that in future the violation of judgment and order to be viewed seriously. Let similar matters which are pending be decided following aforesaid judgment and order. There can be no further litigation as the decision in representative suit is binding.*
>
> *7. The impugned order is set aside and the appeal and the suit stand disposed of in terms of the order passed by this Court in K.S. Varghese (supra), which holds the field.*
>
> *8. Let a copy of the order be circulated to all the Courts in Kerala, and concerned authorities by Registrar General of the High Court of Kerala forthwith. Let Registrar General submit a report to this Court as to how many litigations are pending in the Court as to aforesaid dispute in the various courts. Let the report be submitted within 3 months".*

23. In a police protection matter, we are concerned as to whether the respondents 8 to 15 or their men would create a law and order situation in the event the Vicar and Assistant Priests appointed by the Malankara Metropolitan conducts the prayer and other services in the church. Even going by the nature of counter affidavits filed in the case and also the arguments raised on either side and after hearing the State Attorney, we are of the view that there would be an imminent threat to law and order if any attempt is made by the Vicar or Priests appointed by the

Malankara Metropolitan, to enter the Church to conduct services and to administer the Church.

24. With reference to the manner in which the police has to act and the requirements suggested by the police, we do not want to express any opinion in that regard. Police will have to handle the law and order situation as and when it arises taking into account the ground reality. It is not for us to suggest as to how the police is to act to prevent any untoward incident. Police will have to act within the framework of authority vested in it in accordance with law.

25. Learned State Attorney placed before us a judgment of this Court in ***M/s.Harrisons Malayalam Limited v. State of Kerala*** (2007 (4) KLT 540). That was a case in which several persons had trespassed into a private property, a plantation belonging to the petitioner company. According to the trespassers, they were landless people and they should be provided land by the government. Subsequently when there has been similar instances when there were attempts of large scale trespass into private lands of various estates, this Court had rendered a judgment taking note of the powers of the police under the Kerala Police Act as well in ***Harrisons Malayalam***

Ltd. v. State of Kerala [2010 (3) KLT SN 1 (C.No. 1)] at paragraph 30, which, being relevant, reads as under:-

> *"30. The most important question however, of course, relatable to the issue of operational freedom of the police. There can be no doubt that the police do have operational freedom. They are the experts in their chosen field. However, it is to be noted that the premise of the theory of operational freedom is functional. That is to say, they are free so as to discharge their functions in the most efficient and just manner in varying circumstances. But operational freedom cannot mean that it is reduced to a farce and under the shelter of the concept of operational freedom, the police force are reduced to inertia. If doing nothing, is to be understood as operational freedom, it would amount to condoning omissions on the part of the police to act which itself would be illegal. In other words, if the police have a duty to act while they may have a discretion in law, to decide how best to act and the methodology to be employed as are dictated to by the circumstances, the people whom they are dealing with, the terrain they are acting in and by other imponderables, they cannot shirk their responsibility to act so as to discharge their duties. Operational freedom also would mean that they will act without being influenced by any extraneous considerations. Nor can they come under dictation from any quarters unless it be legally supported".*

26. In the light of the aforesaid factual aspects, we are of

the view that petitioners are entitled for police protection and there will be a direction to respondents 1 to 7 to ensure that adequate and sufficient police protection is rendered to enable the petitioners 3 to 6 to conduct religious services in the 1st petitioner Church and to ensure that the parishioners of the Church participate in such religious services without any obstruction from respondents 8 to 15, their men or their followers or any one claiming under them.

Writ petition is allowed as above.

Sd/-

A.M.SHAFFIQUE

JUDGE

Sd/-

N.ANIL KUMAR

JUDGE

Rp

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APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	**PHOTOSTAT TRUE COPY OF MINUTES OF THE MANAGING COMMITTEE HELD ON 9TH AND 10TH AUGUST 2002**
EXHIBIT P2	**PHOTOSTAT TRUE COPY OF KALPANA NO 134 OF 2002 DATED 12.8.2002**
EXHIBIT P3	**PHOTOSTAT TRUE COPY OF JUDGMENT ON OS NO 6 OF 1985 DATED 25.1.2013 OF THE 1ST ADDITIONAL DISTRICT COURT ERNAKULAM**
EXHIBIT P4	**PHOTOSTAT TRUE COPY OF KALPANA NO 46/2002 DATED 17.8.2002**
EXHIBIT P5	**PHOTOSTAT TRUE COPY OF KALPANA NO 16/2018 DATED 23.4.2018**
EXHIBIT P6	**PHOTOSTAT TRUE COPY OF KALPANA NO 39/2004 DATED 2.8.2004**
EXHIBIT P7	**PHOTOSTAT TRUE COPY OF KALPANA NO 15/2009 DATED 15.6.2009**
EXHIBIT P8	**PHOTOSTAT TRUE COPY OF ORDER DATED 2.4.2013 IN IA NO 805 OF 2013 IN OS NO 7 OF 2013 OF THE 1ST ADDITIONAL DISTRICT COURT ERNAKULAM**
EXHIBIT P9	**PHOTOSTAT TRUE COPY OF JUDGMENT DATED 19.4.2018 OF THE HON'BLE SUPREME COURT IN SLP (C) NO 33156 TO 33159 OF 2014**
EXHIBIT P10	**PHOTOSTAT TRUE COPY OF REPRESENTATION DATED 30.4.2018 SUBMITTED BY THE PETITIONERS**
EXHIBIT P11	**PHOTOSTAT TRUE COPY OF NOTICE DATED 7.5.2018 ISSUED BY THE 7TH RESPONDENT.**

EXHIBIT P12	**PHOTOSTAT TRUE COPY OF JUDGMENT DATED 8.2.2016 IN WPC NO 25413 OF 2013 OF THIS HON'BLE COURT**
EXHIBIT P13	**PHOTOSTAT TRUE COPY OF JUDGMENT DATED 13.10.2017 IN WPC NO 2502/2017 OF THIS HON'BLE COURT**
EXHIBIT P14	**PHOTOSTAT TRUE COPY OF REPRESENTATION DATED 23.5.2018 SUBMITTED BY THE PETITIONERS TO RESPONDENTS 1 TO 7**
EXHIBIT P15	**PHOTOSTAT TRUE COPY OF COUNTER AFFIDAVIT DATED 17.7.2018 OF THE 5TH RESPONDENT IN WPC NO 17998 OF 2018**
EXHIBIT P16	**PHOTOSTAT TRUE COPY OF JUDGMENT DATED 21.2.2019 IN WPC NO 17998 OF 2018**
EXHIBIT P17	**PHOTOSTAT TRUE COPY OF WRITTEN STATEMENT FILED BY THE 8TH RESPONDENT FR.SIMON CHELLIKKATTIL O.S.NO-6 OF 1985**
EXHIBIT P18	**PHOTOSTAT TRUE COPY OF COUNTER AFFIDAVIT IN I.A. NO-6252 OF 2010 IN O.S.NO-6 OF 1985 FILED BY THE 3RD PETITIONER**

RESPONDENTS' EXHIBITS:

ANNEXURE R7(A)	**TRUE COPY OF THE PHOTOGRAPH OF THE ENTRY GATE TO THE PIRAVOM VALIYA PALLY.**
ANNEXURE R7(B)	**TRUE COPY OF THE PHOTOGRAPH SHOWING PART OF THE CHURCH ADMINISTRATION OFFICE BUILDING OF THE PIRAVOM VALIYA PALLY.**
ANNEXURE R7(C)	**TRUE COPY OF THE PHOTOGRAPH OF THE HALL WHERE HOLY MASS IS CONDUCTED.**
ANNEXURE R7(D)	**TRUE COPY OF THE PHOTOGRAPH SHOWING THE REAR SIDE VIEW OF THE SACRISTY.**

ANNEXURE R7(E)	**TRUE COPY OF THE PHOTOGRAPH OF THE BOARD SHOWING THE TIMINGS OF THE HOLY MASS DISPLAYED AT THE PIRAVOM VALIYA PALLY.**
ANNEXURE R7(F)	**TRUE COPY OF THE PHOTOGRAPH OF THE CATHOLICATE CENTRE CHURCH BUILDING.**
ANNEXURE R7(G)	**TRUE COPY OF THE PHOTOGRAPH OF THE SIDE VIEW OF THE CATHOLICATE CENTRE CHURCH BUILDING.**
ANNEXURE R7(H)	**TRUE COPY OF THE GOOGLE MAPS SHOWING THE DISTANCE BETWEEN TWO FACTIONS OCCUPIED CHURCHES.**
ANNEXURE R7(I)	**TRUE COPY OF THE STATEMENT IN FORM 1.**
EXHIBIT R14 A	**TRUE COPY OF AMENDED PLAINT DTD.28.10.2004 IN O.S.NO-6 OF 1985 OF THE 1ST ADDITIONAL DISTRICT COURT,ERNAKULAM**
EXHIBIT R 14 B	**TRUE COPY OF THE G.O. (RT) NO-2242/07/RD DTD.29-5-2007**
EXHIBIT R14 C	**TRUE COPY OF THE ORDER NO-1552/2003 DTD.2.7.2007 OF THE TAHSILDAR,MUVATTUPUZHA**
EXHIBIT R14 D	**TRUE COPY OF THE BUILDING TAX RECEIPT NO-0019786 DTD.31.3.2018 ISSUED BY LOCAL AUTHORITY.**
EXHIBIT R14 E	**TRUE COPY OF G.O.(ORD) NO-10/2019/HOME THIRUVANANTHAPURAM DTD 1.1.2019**
EXHIBIT R10 A	**TRUE COPY OF THE ORDER DATED 22.12.1988 IN I.A.NO-945/1988 IN O.S.NO-2/1985**
EXHIBIT R10 B	**TRUE COPY OF THE PLAINT IN O.S. NO-6/1985 ON THE FILES OF THE I ADDITIONAL DISTRICT COURT,ERNAKULAM**

EXHIBIT R15(A)	**COMMON ORDER DATED 15/11/2005 IN IA NOS. 2665/05 AND 2666/05 IN O.S. NO.6/85 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM.**
EXHIBIT R8 A	**THE TRUE COPY OF THE KALPANA NO.248/74 DATED 22/12/74 APPOINTING THE 8TH RESPONDENT AS VICAR OF THE CHURCH.**
EXHIBIT R8 B	**TRUE COPY OF ORDER DATED 15/02/1988 PASSED BY THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM IN IA NO.102/1988 IN O.S. NO.2/1985.**
EXHIBIT R8 C	**TRUE COPY OF ORDER DATED 12/04/2002 PASSED BY THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM IN IA NO.1326/2002 IN O.S. NO.6/85.**
EXHIBIT R8 D	**TRUE COPY OF KALPANA NO.101/95 DATED 24/11/95 ISSUED BY THE DIOCESAN METROPOLITAN.**
EXHIBIT R8 E	**TRUE COPY OF KALPANA NO.3/1998 DATED 07/01/1998 ISSUED BY 16TH RESPONDENT DIRECTING THE 8TH RESPONDENT TO CONTINUE AS VICAR.**
EXHIBIT R8 F	**TRUE COPY OF ORDER DATED 10/08/2010 PASSED BY THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM IN IA NO.3387/2004 IN O.S. NO.6/85.**
EXHIBIT R8 G	**TRUE COPY OF ORDER DATED 26/10/2010 PASSED BY THIS HON'BLE COURT IN O.P.(C) NO.445/2010.**
EXHIBIT R8 H	**TRUE COPY OF LETTER DATED 29/09/2008 SUBMITTED BY THE PRIEST TRUSTEE BEFORE THE SECRETARY, MINISTRY OF HOME AFFAIRS, UNION OF INIDA AND OTHERS.**
EXHIBIT R8 I	**TRUE COPY OF THE JUDGMENT DATED 15/10/2008 PASSED THIS HON'BLE COURT IN WPC NO.29572/2008.**

EXHIBIT R8 J	**TRUE COPY OF THE LETTER DATED 17/05/2018 ISSUED BY THE PATRIARCH TO THE CATHOLICOSE.**
EXHIBIT R8 K	**TRUE COPY OF THE DEPOSITION DATED 06/02/2019 OF GIVEN BY 16TH RESPONDENT BEFORE THE CJM COURT, THODUPUZHA IN C.C. NO.215/2014.**
EXHIBIT R8 L	**TRUE COPY OF ORDER DATED 19/03/2011 PASSED BY THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM IN IA NO.1269/2011 IN IA NO.6252/2010 IN OS NO.6/1985.**
EXHIBIT R8 M	**TRUE COPY OF NOTICE PUBLISHED IN MALAYALA MANORAMA DAILY DATED 12/01/2018.**
EXHIBIT R15(A)	**COMMON ORDER DATED 15.11.2005 IN IA NOS.2665/05 AND 2666/05 IN OS NO.6/85 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM.**
EXHIBIT R15(B)	**WRITTEN STATEMENT FILED BY 3RD PETITIONER IN OS NO.6/85 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM.**
EXHIBIT R15(C)	**ORDER DATED 02/07/2019 IN SLP(C) NOS.12461/2019 AND 13424/2019 OF THE HON'BLE SUPREME COURT OF INDIA.**

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